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4 RICHARD J. MORRELL,
5 Plaintiff,
6 v.
7 JAMES SEPULVEDA, et al.,
8 Defendants.

9 Case No. [16-cv-00798-SI](#)
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13 **ORDER DISMISSING CASE WITHOUT
14 PREJUDICE FOR FAILURE TO PAY
15 FILING FEE**
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18 Re: Dkt. Nos. 18, 19
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25 On February 17, 2016, plaintiff filed his original complaint and an application to proceed
26 *in forma pauperis* (IFP) before Magistrate Judge Kandis A. Westmore. Dkt. Nos. 1, 2. On March
27 3, 2016, plaintiff's IFP application was denied with leave to amend. *See* Dkt. No. 6. Judge
28 Westmore concluded that plaintiff had filed an incomplete application, in that he had not fully
answered question numbers 4, 7, 9, and 10. *Id.* The order stated:

29 Plaintiff has not indicated the amount he contributes to his spouse's support in his
30 response to question 4.a, and while Plaintiff indicates that he has a bank account, he
31 does not state the name and address of his bank and does not indicate the present
32 balance in his account, all of which is required under question 7. Plaintiff has also
33 failed to respond to question 9, which asks whether he has any other debts.
34 Additionally, Plaintiff states that his complaint does not raise claims that have been
35 presented in other lawsuits, but it appears that he has previously sued the same
36 defendants in this court. *See, e.g., Morrell v. Cowin*, No. 97-cv-02684-VRW;
37 *Morrell v. Cowin*, No. 97-cv-3890-VRW; *Morrell v. McCardle*, No. 98-cv-00174-
38 VRW; *Morrell v. Contra Costa County*, 98-cv-02636-VRW. If these earlier actions
39 relate to the claims asserted in his current complaint, Plaintiff shall list these, and
40 any other, actions in his response to question 10.

41 Plaintiff was ordered to file his amended IFP application by April 6, 2016, or pay the filing fee by
42 that date. *Id.*
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44 On March 29, 2016, plaintiff sent a letter to the clerk's office indicating that he would file
45 a “[n]ew and completed [IFP] form” by April 3, 2016. Dkt. No. 9. He did not do so, nor did he
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1 pay the filing fee by April 6, 2016.

2 On April 6, 2016, this action was reassigned to the undersigned district judge. On April
3 13, 2016, this Court issued an order denying plaintiff's IFP application, reasoning that plaintiff
4 was given over four weeks to cure the deficiencies in his application and failed to do so. *See*
5 *Andrews v. King*, 398 F.3d 1113, 1123-24 (9th Cir. 2005) ("In general, filing an action IFP is a
6 privilege, not a right."). Dkt. No. 13.

7 The Court's April 13, 2016 order afforded plaintiff one additional week from the issuance
8 of the order to pay the filing fee or to lodge with the Court an application for an extension of this
9 April 20, 2016 deadline. *Id.* The order directed plaintiff that, if he sought an extension, he was
10 required to "provide the Court with good cause to grant the extension and a reasonable date for
11 payment of the fee." *Id.* The order cautioned plaintiff that the Court "retain[ed] the discretion
12 to dismiss plaintiff's case should he fail to satisfactorily comply with these requirements." *Id.*

13 On April 18, 2016, plaintiff filed a letter with the Court stating that he had "been in the
14 hospital for the last 12 days and unable to obtain [his] mail." Dkt. No. 15.

15 On April 22, 2016 plaintiff filed a first amended complaint, a renewed motion for leave to
16 proceed *in forma pauperis*, a motion for "telephonic meetings [and] mailing documents," and a
17 letter that again stated plaintiff would file a "[n]ew and completed [IFP] form" by April 3, 2016.¹
18 Dkt. No. 16, 18, 19, 20.

19 Plaintiff's second IFP application was not timely filed and still does not comply with the
20 requirements of Judge Westmore's March 3, 2016 order. Dkt. No. 18; Dkt. No. 6.² Plaintiff was
21 on notice of the requirements of this order as of March 3, 2016 — a month prior to his
22 hospitalization on or about April 6, 2016. Plaintiff has to date not paid the filing fee, despite
23 Judge Westmore's order and this Court's April 13, 2016 order affording plaintiff an extension so

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¹ This letter appears to be a duplicate of the letter plaintiff mailed on March 29, 2016, with
26 the date changed to April 9, 2016. Dkt. No. 9, 20.

27 ² Plaintiff's original, incomplete IFP application used the appropriate IFP form for the
28 Northern District of California. Dkt. No. 2. Plaintiff's later IFP application (Dkt. No. 18) is on a
different form ("Short Form"), which includes fewer questions. It is also incomplete, and does not
include much of the information Judge Westmore ordered.

1 that he might pay the fee. Dkt. No. 13.

2 For these reasons, plaintiff's case is hereby DISMISSED without prejudice for failure to
3 pay the filing fee.

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5 **IT IS SO ORDERED.**

6 Dated: April 26, 2016

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8 SUSAN ILLSTON
9 United States District Judge

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United States District Court
Northern District of California